

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KIMBERLEE L. GUNNING,

Plaintiff,

v.

RIVERSOURCE LIFE INSURANCE  
COMPANY,

Defendant.

CASE NO. C21-1600-JCC

ORDER

This matter comes before the Court on Defendant's motion to extend the discovery deadline<sup>1</sup> (Dkt. No. 87) and Plaintiff's motion to seal (Dkt. No. 91). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby DENIES Defendant's motion and GRANTS Plaintiff's motion for the reasons explained herein.

Defendant asks the Court to allow it to disclose information after the discovery deadline. (Dkt. No. 87.) The Court's scheduling order may only be modified for good cause. Fed. R. Civ. P. 16(b)(4). The focus of inquiry for deciding whether such good cause exists is whether the party seeking modification has been diligent. *DRK Photo v. McGraw-Hill Glob. Educ. Holdings*,

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<sup>1</sup> Defendant cites to Rule 37(c). However, because the discovery deadline has passed, a motion to compel is procedurally improper. Nonetheless, the Court will consider Defendant's request as a motion to extend the discovery deadline under Rule 16.

1 *LLC*, 870 F.3d 978, 989 (9th Cir. 2017); *see also Shafer v. C.R. Bard, Inc.*, Case No. C20-1056-  
2 RSM, Dkt. No. 26 (W.D. Wash. 2021) (denying extension of discovery deadline because  
3 Plaintiff did not act diligently).

4 Here, Defendant argues that it was unable to locate Tom McCarthy until recently and did  
5 not know it would need to produce the contents of the Swiss Re Life Guides. (Dkt. No. 94 at 5.)  
6 But the fact remains that information about the guide was readily available to Defendant, but  
7 Defendant chose not to present it. (Dkt. No. 94 at 5) (“[Defendant] believed it had all the  
8 evidence it needed to support its argument.”) Defendant was not diligent in seeking out this  
9 information, and so an extension of the discovery deadline is not proper. Defendant cannot now  
10 have a second bite at the apple to introduce more evidence to support its defense. Accordingly,  
11 Defendant’s motion (Dkt. No. 87) is DENIED.

12 Plaintiff requests fees incurred in responding to Defendant’s motion. (Dkt. No. 90 at 12.)  
13 However, Rule 16(f)(1)(C) provides for fees only if a party “fails to obey a scheduling or other  
14 pretrial order.” Defendant has not failed to obey a previous order—rather it seeks relief from the  
15 order—so Plaintiff’s request for fees is DENIED.

16 Plaintiff also asks the Court to seal its supporting exhibit pursuant to the stipulated  
17 protective order. (Dkt. No. 91.) Although there is a presumption in favor of public access to court  
18 records, a party may overcome that presumption by presenting facts showing that compelling  
19 reasons for keeping the filings sealed outweigh the public’s interest in the filings. *Foltz v. State*  
20 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). Here, the material at issue  
21 contains proprietary information provided by a third party for purposes of litigation. This is a  
22 compelling reason to keep the filing under seal and Plaintiff’s motion (Dkt. No. 91) is  
23 GRANTED.

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1 DATED this 30th day of January 2023.

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5 John C. Coughenour  
6 UNITED STATES DISTRICT JUDGE  
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